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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,558	03/23/2004	Rod Lovett	TOW-0001	2565
7590	02/25/2005			
Shawn Hunter 4058 Tartan Lane Houston, TX 77025			EXAMINER KIM, CHRISTOPHER S	
			ART UNIT 3752	PAPER NUMBER

DATE MAILED: 02/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/806,558	<b>Applicant(s)</b> LOVETT, ROD	
	<b>Examiner</b> Christopher S. Kim	<b>Art Unit</b> 3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2004.
- 2a) ☒ This action is **FINAL**.      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. The response filed December 13, 2004 is acknowledged.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 102***

3. Claims 1, 3, 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Hawks, Jr. (5,303,866).

Hawks, Jr. discloses a mosquito misting system comprising: a fluid reservoir 54; a misting nozzle 38; a conduit 28, 136, 536; a pump 70, 500; an agitator 144, 514; a controller (switch for pump, column 6, lines 27-41); a pressure switch (pressure sensor, column 6, line 37); a remote control 36

### ***Claim Rejections - 35 USC § 103***

4. Claims 2, 11-16 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hawks, Jr. (5,303,866) in view of Khurgin et al. (4,433,577).

Hawks, Jr. discloses the limitations of the claimed invention with the exception of the plurality of float sensor assemblies. Khurgin teaches a plurality of float level sensor assemblies in figure 14. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided a plurality of float level sensor

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assemblies in the device of Hawks, Jr. as taught by Khurgin to sense the level of the liquid.

5. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hawks, Jr. (5,303,866) in view of Sowry et al. (6,558,078).

Hawks, Jr. discloses the limitations of the claimed invention with the exception of the moisture sensor. Sowry teaches a moisture sensor (column 2, line 64) for use in a fertilizer sprayer system. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided a moisture sensor in the device of Hawks, Jr. as taught by Sowry to sense moisture in the ground.

6. Claims 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hawks, Jr. (5,303,866) in view of Dodds et al. (5,333,785).

Hawks, Jr. discloses the limitations of the claimed invention with the exception of the transmitter. Dodds teaches a transmitter 115 to send various data and information. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided a transmitter in the device of Hawks, Jr. as taught by Dodds to remotely collect data.

7. Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hawks, Jr. (5,303,866) in view of Khurgin et al. (4,433,577) as applied to claim 11 above, and further in view of Dodds et al. (5,333,785).

Hawks, Jr. in view of Khurgin discloses the limitations of the claimed invention with the exception of the transmitter. Dodds teaches a transmitter 115 to send various data and information. It would have been obvious to a person having ordinary skill in

the art at the time of the invention to have provided a transmitter in the device of Hawks, Jr. in view of Khurgin as taught by Dodds to remotely collect data.

### ***Response to Arguments***

8. Applicant's arguments filed December 13, 2004 have been fully considered but they are not persuasive.

In response to applicant's argument Hawks discloses no programmable controller associated with the switch or the pump, or with the agitator, Hawks discloses a programmable controller (switch for pump, column 6, lines 27-41).

Applicant argues that Hawks component 144 does not teach "an agitator for drawing outside air into the fluid reservoir for mixing of fluid insecticide within the reservoir." The recitation "for..." merely recites the manner in which a claimed apparatus is intended to be employed and does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.

Applicant argues that Hawks component 514 fails to teach the agitator recited in claim 1 because Hawks is a "spraying system suitable for applying dry flowables." Applicant's claimed invention does not preclude dry flowables. Applicant's claimed invention merely recites the intended use "for containing fluid insecticide," "for dispersal of fluid insecticide," and "for mixing of fluid insecticide." Even if "fluid" is a positively recited limitation, the term "fluid" is defined as

A continuous, amorphous substance whose molecules move freely past one another and that has the tendency to assume the shape of its container; a liquid or gas.

The American Heritage® Dictionary of the English Language, Third Edition copyright © 1992 by Houghton Mifflin Company. The term "fluid" encompasses dry flowables.

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. Kim whose telephone number is (571) 272-4905. The examiner can normally be reached on Monday - Thursday, 6:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on (571) 272-4919. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher S. Kim  
Primary Examiner  
Art Unit 3752

CK